

Introduced by Senator Morrow

February 23, 2006

An act to amend Section 15402 of the Government Code, and to add Chapter 1.5 (commencing with Section 1509.1) to Title 12 of Part 2 of the Penal Code, relating to death penalty appeals.

LEGISLATIVE COUNSEL'S DIGEST

SB 1558, as introduced, Morrow. Death penalty appeals: appointment of counsel.

Existing law provides for the employment and supervision of the attorneys of the State Public Defender, as specified. This bill would provide that the State Public Defender shall maintain no less than an unspecified number of funded positions, including an unspecified number of attorney positions.

Existing law establishes the procedures for the appointment of counsel in indigent criminal appeals when it is other than the State Public Defender.

This bill would provide that in noncapital cases the appointee must apply to the Supreme Court within an unspecified time of meeting competency standards, or in capital cases, to have been appointed by the Supreme Court.

This bill would further provide an expedited system of reviewing cases in which a death sentence is imposed. These provisions would be the only procedures for challenging a conviction that resulted in a sentence of death, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 15402 of the Government Code is amended to read:

15402. The State Public Defender may employ deputies and other employees, and establish and operate offices, as he or she may need for the proper performance of his or her duties. The State Public Defender may contract with county public defenders, private attorneys, and nonprofit corporations organized to furnish legal services to persons who are not financially able to employ counsel and pay a reasonable sum for those services pursuant to the contracts. He or she may provide for participation by those attorneys and organizations in his or her representation of eligible persons. The attorneys and organizations shall serve under the supervision and control of the State Public Defender and shall be compensated for their services either under those contracts or in the manner provided in Section 1241 of the Penal Code.

The State Public Defender may also enter into reciprocal or mutual assistance agreements with the board of supervisors of one or more counties to provide for exchange of personnel for the purposes set forth in Section 27707.1.

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In order to ensure indigent defendants the effective assistance of counsel in the implementation of Section 15421, the office of the State Public Defender may hire 15 additional staff attorneys and the support staff necessary for proper implementation of Section 15421 shall maintain no less than ____ funded positions, including ____ attorney positions.

SEC. 2. Chapter 1.5 (commencing with Section 1509.1) is added to Title 12 of Part 2 of the Penal Code, to read:

CHAPTER 1.5. DEATH PENALTY APPEALS

1509.1. The purpose of this chapter is to establish an expedited system of review of cases in which a death sentence is imposed, in order to achieve the following goals:

(a) Comply with the requirements Chapter 154, Title 28, United States Code in order to obtain the benefit of expedited federal habeas proceedings under that chapter.

(b) Improve the accuracy, completeness, and justice of review proceedings by requiring that postconviction review commence immediately after the imposition of a sentence of death and that factual questions be resolved in the forum best suited to resolve them.

(c) Allow for the full and fair examination of all legally cognizable postconviction issues by the trial court and the California Supreme Court.

(d) Eliminate, to the fullest extent possible, unreasonable and unjust delays in the resolution of postconviction issues by reducing the number of proceedings in capital cases.

1509.2. (a) Notwithstanding any other statute or rule, a motion under this chapter and the direct appeal are the only procedures for challenging a sentence of death or the conviction that resulted in the sentence of death, except that a claim of ineffective assistance of appellate counsel may be made in a habeas corpus petition to the California Supreme Court.

(b) This chapter applies whether the sentence of death was imposed before or after the effective date of this chapter, except as provided in subdivision (c) and except as required by the California Constitution or by the Constitution or laws of the United States.

(c) Notwithstanding subdivision (a), a habeas corpus case in which the petition was filed before the effective date of this chapter may continue under prior law, but the court may, for good cause shown, convert the habeas proceeding into a motion under this chapter and transfer it to the trial court.

1509.3. As used in this chapter, unless the context otherwise requires:

(a) “Direct appeal” means the appeal pursuant to Chapter 1 (commencing with Section 1235) to the California Supreme Court of any issues raised at the entry of a guilty plea, before trial, at trial, at the penalty phase hearing, or in a motion for new trial.

(b) “Direct appeal counsel” means the attorney retained by the defendant, or appointed by the Supreme Court for purposes of representing the defendant in direct appeal proceedings.

(c) “New postconviction counsel” means the attorney retained by the defendant, or appointed by the trial court to represent an indigent defendant, for the purposes of representing the

1 defendant in postconviction review and postconviction review
2 appeal proceedings. New postconviction counsel cannot have
3 previously represented the defendant with regard to the capital
4 felony charge.

5 (d) “Postconviction review” means review as provided in this
6 chapter by the trial court that occurs after conviction in a capital
7 felony case in which the death penalty is imposed as punishment.

8 (e) “Postconviction review appeal” means the appeal to the
9 California Supreme Court of any issues raised in postconviction
10 review proceedings.

11 (f) “Trial counsel” means the attorney who represents the
12 defendant with regard to the capital felony charge: For the
13 purposes of any guilty plea; before trial; at trial; at the penalty
14 phase hearing; for the purposes of a motion for new trial; for the
15 purposes of postconviction review if the defendant chooses to
16 continue with trial counsel for purposes of postconviction
17 review; and for the purposes of direct appeal if the defendant
18 chooses to continue with trial counsel for purposes of direct
19 appeal. “Trial counsel” does not include new postconviction
20 counsel appointed pursuant to Section 1509.5 or direct appeal
21 counsel.

22 1509.4. (a) After imposition of a sentence of death, the trial
23 court shall order the defendant, trial counsel, and the prosecution
24 to attend a hearing to be held after the date upon which the
25 sentence of death is imposed. At the hearing, the trial court shall:

26 (1) Advise the defendant of the nature of review as provided in
27 this chapter.

28 (2) Advise the defendant of the right to direct appeal counsel.

29 (3) Advise the defendant that the issue of ineffective
30 assistance of trial counsel before trial, at trial, or during the
31 penalty phase hearing may only be raised on postconviction
32 review and on postconviction review appeal.

33 (4) Advise the defendant that the issue of ineffective
34 assistance of counsel on direct appeal counsel may only be raised
35 by way of a petition for a writ of habeas corpus filed in the
36 California Supreme Court by new postconviction counsel or the
37 defendant.

38 (5) Determine whether the defendant intends to pursue
39 postconviction review.

1 (6) If the defendant intends to pursue postconviction review,
2 determine whether the defendant intends to proceed with or
3 without counsel.

4 (b) After a full discussion on the record, if the defendant
5 knowingly, voluntarily, and intelligently waives the right to
6 pursue postconviction review or the right to appointed counsel
7 for postconviction review, the trial court shall enter an order
8 finding that the waiver was knowing, voluntary, and intelligent.

9 (c) When any two of the following factors are found to exist at
10 trial, and the defendant elects to pursue postconviction review,
11 review shall be completed within _____ years of the date of
12 conviction:

13 (1) The defendant makes a knowing, intelligent, and voluntary
14 written confession of guilt of the charged crime.

15 (2) DNA testing conclusively establishes the defendant's guilt
16 in the charged crime.

17 (3) A video recording conclusively establishes the defendant's
18 guilt in the charged crime.

19 1509.5. (a) At or after the hearing held pursuant to Section
20 1509.4, if the defendant chooses to pursue postconviction review,
21 the trial court shall enter an order appointing new postconviction
22 counsel for the defendant if the trial court finds that the defendant
23 is indigent and either the defendant requests and accepts such
24 appointment or the trial court finds that the defendant is unable to
25 competently decide whether to accept or reject the appointment.
26 However, the trial court shall not appoint new postconviction
27 counsel if any of the following apply:

28 (1) The defendant has retained new postconviction counsel.

29 (2) The defendant has elected to proceed without counsel and
30 the trial court finds, after a full discussion on the record, that the
31 defendant's election to proceed without counsel is knowing,
32 intelligent, and voluntary.

33 (3) The defendant elects to have trial counsel continue
34 representing the defendant for purposes of postconviction review
35 and the trial court finds, after a full discussion on the record, that
36 all of the following apply:

37 (A) The defendant understands that new postconviction
38 counsel can be retained by the defendant for purposes of
39 postconviction review or appointed by the trial court for the
40 defendant if the defendant is indigent.

1 (B) The defendant understands that, by electing to have trial
2 counsel continue to represent the defendant for purposes of
3 postconviction review, the defendant waives the right to
4 challenge the effectiveness of trial counsel's representation at
5 any stage of the proceedings.

6 (C) The defendant's election to have trial counsel continue to
7 represent the defendant for purposes of postconviction review is
8 knowing, intelligent, and voluntary.

9 (D) Trial counsel agrees to continue representing the
10 defendant for purposes of postconviction review.

11 (4) If any two of the following are found to exist at trial, and
12 trial counsel meets the qualifications provided in Section 1509.55
13 and agrees to continue representing the defendant for purposes of
14 post conviction review:

15 (A) The defendant makes a knowing, intelligent, and voluntary
16 written confession of guilt of the charged crime.

17 (B) DNA testing conclusively establishes the defendant's guilt
18 in the charged crime.

19 (C) A video recording conclusively establishes the defendant's
20 guilt in the charged crime.

21 (b) In appointing new postconviction counsel to represent an
22 indigent defendant, the trial court shall appoint one or more
23 attorneys, at least one of whom meets the qualifications provided
24 in Section 1509.55.

25 (c) In any case in which the trial court appoints new
26 postconviction counsel or new postconviction counsel is retained,
27 the new postconviction counsel shall not be retained or appointed
28 to act as cocounsel with trial counsel and shall not be associated
29 or affiliated with trial counsel. New postconviction counsel shall
30 exercise independent judgment and act independently from trial
31 counsel.

32 (d) The ineffectiveness of counsel during postconviction
33 review shall not be a basis for relief.

34 1509.55. (a) Except as provided in subdivision (b) of this
35 section, at least one attorney appointed to represent the defendant
36 in proceedings governed by this chapter shall have been admitted
37 to practice in California or another state for a total of five years
38 and have at least three years experience in the handling of
39 appeals or postconviction proceedings in felony cases.

1 Experience in defense and prosecution shall be considered
2 equally for this purpose.

3 (b) The court, for good cause, may appoint an attorney not
4 meeting the requirements of subdivision (a) whose background,
5 knowledge, or experience would otherwise enable him or her to
6 properly represent the defendant, with due consideration to the
7 seriousness of the possible penalty and to the unique and
8 complex nature of the litigation.

9 1509.6. (a) (1) In any case in which a defendant has been
10 convicted of a capital felony and been sentenced to death, all
11 motions for postconviction review and all postconviction review
12 proceedings are governed by this chapter and by the rules
13 adopted to implement this chapter.

14 (2) Any motion for postconviction review shall state with
15 particularity the grounds upon which the defendant intends to
16 rely, including a statement of the facts and citations of law. A
17 motion for postconviction review may include only those issues
18 specified in paragraph (3) of this subdivision (a). If any claim
19 alleges a crime or violation of professional duty by any person,
20 the motion shall include a declaration by counsel that he or she
21 has investigated the claim and has probable cause to believe the
22 allegation is true.

23 (3) The claims to be considered on a motion for postconviction
24 review are limited to claims that would have been proper grounds
25 for relief from a judgment on a writ of habeas corpus under the
26 law in effect prior to enactment of this chapter and which either
27 (A) cannot be made on appeal because they are based on facts
28 outside the appellate record, (B) allege ineffective assistance of
29 trial counsel, or (C) meet the criteria for a successive petition
30 under Section 1509.7.

31 (b) By alleging that trial counsel rendered ineffective
32 assistance, the defendant automatically waives the attorney client
33 privilege between the defendant and trial counsel with respect to
34 information that is related to the defendant's claim of ineffective
35 assistance.

36 (c) Neither the defendant nor the prosecution may file a
37 motion for reconsideration or rehearing of the trial court's ruling
38 on the motion for postconviction review. The granting or denying
39 of a motion for postconviction review under this section is a final
40 order reviewable on appeal by the California Supreme Court.

(d) Unless relieved by the Supreme Court, postconviction counsel shall continue to represent the defendant on appeal from trial court's grant or denial of the motion. If the direct appeal is completed, postconviction counsel shall concurrently evaluate whether defendant has a substantial claim of ineffective assistance of appellate counsel, and, if so, file a habeas corpus petition for that claim in the Supreme Court.

1509.7. (a) The initial motion for postconviction review shall be filed within six months of the appointment of counsel or of the court's decision not to appoint counsel pursuant to Subdivision (a) of Section 1509.5. An initial motion filed after that date and any successive motion shall be dismissed unless it contains a claim meeting the criteria under subdivision (b).

(b) A claim presented in a successive motion or an untimely initial motion shall be dismissed unless one or more of the following apply:

(1) The failure to raise the claim in a timely initial motion was the direct result of interference by government officials with the presentation of the claim in a manner which violated the constitution or laws of the United States or California.

(2) The facts upon which the claim are based were unknown to the defendant and could not have been ascertained by the exercise of due diligence, and the defendant has a substantial claim that he or she is actually innocent of the offense.

(3) The right asserted by the defendant is a constitutional right that was recognized by the supreme court of either the United States or California, the constitutional right applies retroactively to defendant's case, and the motion is filed within 90 days of the date of the decision, or, if retroactivity is not clearly established at the time the right is recognized, within 90 days of the decision making it retroactive.

(4) Clear and convincing evidence establishes that the defendant is actually innocent of the offense.

(c) For the purpose of a claim of actual innocence under paragraph (2) or (4) of subdivision (b), the court shall consider all available evidence, regardless of its admissibility at trial. A claim that goes only to sentence or degree of offense or a claim based on voluntary intoxication or mental disease or defect is not a claim of innocence for this purpose.

(d) Before a motion under subdivision (b) is filed in the superior court, the party shall apply in the Supreme Court for an order authorizing the superior court to consider the motion. The superior court shall immediately dismiss any motion filed in violation of this requirement. The Supreme Court shall grant the application only if it determines that the application makes a prima facie showing that the motion satisfies the requirements of subdivision (b). The determination that a prima facie showing has been made does not preclude a determination by the superior court of whether the requirements are satisfied, and the superior court shall dismiss the motion if it finds the requirements are not satisfied. The Supreme Court shall decide an application under this subdivision within 30 days of filing. An application under this subdivision is not an “application for state postconviction or other collateral review” within the meaning of 28 U.S.C. Sec. 2244(d)(2), and a delayed or successive motion filed without authorization is not “properly filed” within the meaning of that section.

SEC. 3. In addition to all other positions currently provided for, the Department of Justice shall increase the number of attorney positions in the Criminal Division by ____.